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2010 JAN 27 AM 10:18

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

CHRIS KOSTER
ATTORNEY GENERAL

OFFICE OF GENERAL
COUNSEL P.O. Box 899
63703 781-0081

January 13, 2010

Mr. Jeff S. Jordan
Supervising Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 6237

Dear Mr. Jordan:

I am the General Counsel for Chris Koster, Attorney General of Missouri, and have been designated as Counsel for the purposes of responding to complaint MUR 6237. The designation form is included with this letter. Your letter of December 14, 2009 requests a response to a complaint filed by Chris Brockway, dated November 30, 2009, alleging that State Senator Bill Stouffer and the State of Missouri may have violated the Federal Election Campaign Act of 1971, as amended. The time for response to your request has been extended until January 19, 2010. This response is made only on behalf of the State of Missouri; my assumption is that Senator Stouffer will respond separately.

Initially, it appears that the State of Missouri appears not to be a proper party respondent to the current action. Mr. Brockway does not directly name the State of Missouri as a party to the complaint. His clear intent is a complaint concerning alleged misuse by Senator Stouffer of his state campaign funds and state resources in the form of his individual Missouri Senate staff. Secondly, the State of Missouri believes that it cannot be named as a party to an FEC complaint based on the reasoning of *Federal Maritime Commission v. South Carolina State Ports Auth.*, 535 U.S. 743. Secondly, it is our position that the State of Missouri is not a "person" as defined in 2 U.S.C. section 431(11) and could not be subjected to an enforcement action in federal district court because of the provisions of the Eleventh Amendment.

Nevertheless, it is the desire of the State of Missouri to cooperate with the FEC request and provide it the requested information so that you may determine whether properly named parties have violated federal election laws. Based on my conversations with you and Kim Collins, I understand your inquiry to be whether the State of Missouri has made an "in-kind" contribution to Senator Stouffer's federal election campaign though his alleged use of his private office staff to perform campaign functions. We have no information that would support the allegations against Senator Stouffer.

The State does not approve or sanction the use of legislative staff, who are state employees, to perform campaign functions, local or federal, while they are "on the state clock". The two named individuals in Mr. Brockway's complaint are state employees who work only in and for Senator Stouffer's office. No state employee other than Senator Stouffer keeps time records for these employees or tracks their work hours for the State of Missouri. Each year the Senate Administrator distributes a memorandum to state senators concerning campaign work by a senator's employees. An advisory opinion by the Missouri State Ethics Commission (MEC Opinion No. 2001.04.104) opines that political activity is allowed by legislative staffers if it is not performed on "state time". Copies of the MEC opinion and the Senate memorandum dated May 8, 2008 are attached.

Sincerely yours,



Ronald Holliger
General Counsel

10044263479



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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OFFICE OF GENERAL
COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client
FAX (202) 219-3923

MUR # 6237 _____

NAME OF COUNSEL: RONALD HOLLIGER, GENERAL COUNSEL
FIRM: MISSOURI GENERAL'S OFFICE

ADDRESS: 207 W. HIGH STREET
P.O. BOX 899
JEFFERSON CITY, MO. 65102

TELEPHONE- OFFICE (573) 751-8828

FAX (573) 751-0774

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

MISSOURI ATTORNEY GENERAL

Date Respondent/ Client Signature Title

RESPONDENT/CLIENT STATE OF MISSOURI

(Please Print) C/O CHRIS KOSTER, ATTORNEY GENERAL

MAILING ADDRESS: P.O. BOX 899
JEFFERSON CITY, MO. 65102

TELEPHONE- HOME ()

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

Rev. 2006

10044263480



MEC
OPINION NO.

2001.04.104

COPY

STATE OF MISSOURI
MISSOURI ETHICS COMMISSION
P. O. BOX 1254
JEFFERSON CITY, MISSOURI 65102

573/751-2020
1-800/392-8660

April 26, 2001

At the April 24, 2001 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your question:

Is it a conflict of interest for a state employee to work at a political consulting business during vacations, holidays, weekends or at night?

The Commission stated that so long as the work performed by the state employee is allowed by the policy or procedure of the appointing authority and the work is not performed while the individual is on "state time", there appears to be no conflict of interest. The individual cannot use any confidential information obtained from his state employment to further this outside work.

Sincerely,


Charles G. Lamb, Ph.D.
Executive Director

MCR:bd

NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.